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No. 566

In the Supreme Court of the United States

OCTOBER TERM, 1968

PAUL SULGER, PETITIONER

v.

B. H. POCHYLA, CONSTANCE POCHYLA, THOMAS A. RYAN, and KATHERINE RYAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, the operator of a limousine and bus service at Fort Huachuca, Arizona brought this defamation action against the respondent Army officers and their wives. At the time of the alleged defamation, General Pochyla was the commanding general of the Fort and Colonel Ryan was the Staff Judge Advocate. The relevant facts, fully set out in the opinion of the United States Court of Appeals for the Ninth Circuit, show that all statements made about peti-

tioner, including charges made against him before the Arizona Corporation Commission, were made by the officers in the course of an investigation into his fitness to continue to provide transportation service to the base. General Pochyla, as commanding officer, was directly responsible for all matters affecting the health, safety and moral well being of the military and civilian personnel at Fort Huachuca (R. 32; 53). Colonel Ryan, as Staff Judge Advocate, was responsible for giving legal advice and guidance to the General (R. 37; 57), and was acting under his orders in investigating the charges against petitioner and preparing for the hearings before the Commission (R. 32-35; 39-41). Thus, as the Ninth Circuit correctly held, all statements made about petitioner and the charges against him, whether made by Colonel Ryan (R. 44) or General Pochyla (R. 35), were within the "outer perimeter" of their official duties, and accordingly were absolutely privileged, *Barr* v. *Matteo*, 360 U.S. 564.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1968.

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